87-57

Supreme Court, U.S.
FILED
JUN 17 1987
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

Supreme Court of the United States

October Term, 1986

UNIVERSITY OF CINCINNATI,
d/b/a UNIVERSITY HOSPITAL

Petitioner

--vs.--

SECRETARY OF HEALTH & HUMAN SERVICES

Respondent

SUPPLEMENTARY APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNIVERSITY OF CINCINNATI,	)	
	)	No. C-1-84-625
Plaintiff	)	
	)	
v.	)	**MEMORANDUM**
	)	
MARGARET M. HECKLER,	)	
	)	
Defendant	)	
	)	

HOGAN, S. J.:

Cross motions for summary judgment filed by the plaintiff, the University of Cincinnati (doc. 12), and by the defendant, the Secretary of Health and Human Services (doc. 11), and a reply memorandum by the defendant (doc. 13), were heard on April 18, 1985.

Having considered the briefs and the oral arguments of both parties to this well-presented case, the Court has decided to sustain the motion of the plaintiff. Summary judgment is appropriate as there are no material issues of fact in dispute. *See* Fed. R. Civ. P. 56; *In re Atlas Concrete Pipe, Inc.*, 668 F.2d 905, 908 (6th Cir. 1982).

We reach two conclusions of law. First, the decision of the Sixth Circuit in *Saline Community Hospital v. Secretary of Health & Human Services*, 744 F.2d 517 (6th Cir. 1984) is distinguishable on its facts from the instant case. Second, having compared the decision of the Seventh Circuit in *St. Mary of Nazareth Hospital Center v. Department of Health & Human Services*, 698 F.2d 1337 (7th Cir.), *cert. denied*, 104 S. Ct. 107 (1983), with that of the District of Columbia Circuit in *Athens Community Hospital v. Schweiker*, 743 F.2d 1 (D.C. Cir. 1984), we have determined that the

former announces the correct interpretation of the jurisdictional bounds contained in 42 U.S.C. S 1395oo(d).

Therefore, this Court concludes that the Provider Reimbursement Review Board incorrectly declined to exercise jurisdiction. The reasons for this conclusion are those expressed by the Seventh Circuit in *St. Mary*.

Judgment in accordance with this memorandum may be entered.

Timothy S. Hogan
United States Senior District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNIVERSITY OF CINCINNATI, *Plaintiff*	)	No. C-1-84-625
v.	)	**JUDGMENT**
MARGARET M. HECKLER, *Defendant*	)	

Cross-motions for summary judgment filed by the Plaintiff, the University of Cincinnati, and by the Defendant, the Secretary of Health and Human Services, and a reply memorandum by the Defendant were heard by this Court on April 18, 1985. Having considered the briefs and oral arguments of both parties, the Court does hereby enter a judgment in accordance with its Memorandum filed on April 19, 1985, and

DECLARES that the Provider Reimbursement Review Board (PRRB) has jurisdictional authority for the 1979, 1980 and 1981 cost years concerning the self-disallowed costs of the interns' and the residents' education and related overhead in connection with the Family Practice Clinic and Central Psychiatric Clinic issues and it is hereby ORDERED that this cause be remanded to the PRRB for proceedings consistent with this Judgment.

Dated this 13 day of June, 1985.

Judge, United States District Court
Southern District of Ohio,
Western District at Cincinnati